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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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| Implementation of the Cable Television Consumer Protection and Competition Act of 1992 | ) ) ) | MM Docket No. 92-260 |
| Cable Home Wiring | ) ) | |

# REPLY COMMENTS

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## REPLY COMMENTS

### INTRODUCTION

Our prior Comments recommended a straightforward right for individuals (not businesses) to acquire internal wiring within the dwelling unit upon termination of service. Compensation would be based on the greater of unrecovered investment or replacement cost, plus a transaction fee; or on a reciprocal compensation arrangement negotiated by competing video providers. Commercial wiring and common wiring within MDUs (including loop through wiring) would be excluded, and the rules would clarify an intention not to interfere with access to individual residents of MDUs. No transfer would be required after termination for theft or nonpayment.

Without much regard for practical or legal constraints, a number of comments urge the Commission to transfer ownership of all wiring everywhere immediately to individual and institutional owners, regardless of theft, nonpayment, lack of termination, lack of compensation, signal leakage or other realities.

A. Telephone Inside Wire Rules Cannot Practically Be Applied to Cable Home Wiring

1. Telephone Rules Do Not Fit An Industry That Markets Content Rather than Pure Transport

The comments of the telephone and utilities industries and others urge the Commission to apply its telephone inside wire rules to cable home wiring, thus transferring all incidents of ownership to all subscribers even before termination.[1/] There are practical and legal reasons which foreclose the Commission from applying its telephone inside wiring rules wholesale to cable home wiring.

First, cable television sells more than transport. It sells programming content. Just as print publishers charge more for two books than for one, cable assesses additional charges for additional outlets (each of which can simultaneously receive different programming from different services). The legitimacy of such separate charges is codified in the new Section 623(b)(3). A wholesale turnover of control of home wiring to each subscriber at the outset -- whether through title, a declaration of "fixture," or through the right to "remove, replace, rearrange or maintain" the wiring -- would force the

1/ Comments of Pac Tel; USTA; Bell South; NYNEX; Bell Atlantic; UTC; Building Industry Consulting Service Int'l; EIA/CEG; Multiplex Technology. All citations to Comments are to Comments filed December 1, 1992 in this Docket.

industry to either tolerate piracy or shift the substantial costs incurred to serve A.O.s to every basic subscriber.

### 2. Telephone Rules Do Not Fit An Industry that Operates Under Strict Aeronautical Channel Restrictions

Second, cable television providers, unlike LECs, make use of aeronautical channels which may only be used if leakage is strictly controlled. With 20% of leakage attributable to home wiring,[2/] inviting wholesale subscriber manipulation of home wiring threatens to aggravate leakage into the aeronautical band and put at risk the industry's continued use of the 108-137 and 225-400 MHz bands.

### 3. Telephone Rules Assume A Market In Which All Installation Costs May Be Recovered Up Front

Third, regardless of rhetorical claims of cable's monopoly status, cable is in daily competition with other media. About 40% of TV households have so far resisted cable, and many of the 60% had to be attracted with free or reduced installation charges. Unlike telephone, the market has been unwilling to pay the full cost of installing home wiring as price of entry to cable service. That is why the average installation charge is far below actual installation costs. Suggestions that

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2/ Comments of TKR.

subscribers be held captive for an amortization period,[3/] or continue to be billed installments after termination,[4/] are simply unrealistic.

### 4. Telephone Rules Are Addressed to A Different Market Concern Than Cable Home Wiring

Fourth, the goal of telephone inside wire rules was to promote a competitive market in installation and maintenance, which is not a problem which Congress has addressed for cable. Had cable operators truly wished to dominate a deregulated installation market for hybrid telco/cable wire[5/] they would have been competing in that market instead of trying to market cable services and installing the home wiring incident to delivering cable. What Congress expressly sought to preclude in the 1992 Act is destructive removal of cable wiring which a homeowner sought to acquire at termination[6/] -- a problem that all of the Comments agree is extremely rare, and has been enjoined to boot.[7/]

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3/ Comments of NATOA.

4/ Comments of Wireless Cable.

5/ A misimpression held by Bell South and Bell Atlantic, among other telco commentators.

6/ S. Rep. 23, H. Rep. 118. ("This section does not address matters concerning cable facilities inside the subscriber's home prior to termination of service.")

7/ Comments of NYS Comm'n on Cable; Comments of NY City; Comments of Wireless Cable.

Thus, as a practical matter, application of the telephone rule would promote piracy, invite increased leakage, discourage subscriptions through high installation costs. None of that serves the purposes of the home wiring provisions.

### B. The 1992 Act Precludes The Mandatory Giveaway of All Wire to All Users

There are also legal barriers to application of the telephone rule, and of the variations suggested by a number of comments.

#### 1. The 1992 Act Does Not Compel Pre-Termination Transfers

First, the Commission has no authority to require pre-termination transfer of use or ownership to the homeowner,[8/] nor to compel "whole house" free-A.O.s as a universal rate structure.[9/] The Commission strives to steer clear of state property disputes; the home wiring statute addresses post-termination transfers, S. Rep. 23, H. Rep. 118; and § 623(b)(3) of the rate statute preserves the right to charge separately for A.O.s. As noted in Comments, however, an operator remains free to adopt a policy transferring home wiring to subscribers upon installation, if the operator chooses to do so.

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8/ As recommended by NATOA; Liberty Cable; Wireless Cable; WJB and the parties cited in note 1.

9/ As recommended by USTA.

### 2. The 1992 Act Does Not Compel Simultaneous Access on a Common Carrier Basis

Second, for all those who seek mandatory pre-termination access to home wiring for other informational or utility purposes,[10/] Congress has specifically disclaimed any pre-termination transfer of wiring or any "common carrier" obligation on cable home wiring.[11/]

### 3. The 1992 Act Directs the FCC to Mitigate Piracy

Third, mandatory universal transfer of all home wiring to all subscribers promotes the very piracy which Congress instructed the Commission to mitigate.[12/] The suggestion that an individual be allowed to steal service and then take home wiring for free when found out[13/] reflects an appalling disregard for statutory directive and the rights of honest customers who bear the costs of piracy.

### 4. The 1992 Act Does Not Compel Transfer of Commercial or MDU Common Wiring

Fourth, those comments seeking to transfer common

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10/ *E.g.*, APPA, USTA, Multiplex Technologies.

11/ H. Rep. 118-19.

12/ *Ibid*. See Comments of Continental Cablevision.

13/ Comments of APPA.

wiring in MDUs or any wiring in commercial properties have ignored Congress' focus on the privacy-enhanced rights of "individual" subscribers and its express disclaimer of FCC authority over MDU common wiring.[14/] Transferring common wiring simply invites evictions of operators from MDUs and the interposition of developers between individual residents and their respective choices among competing cable providers. That would frustrate, not promote, the competition Congress sought to promote.

### 5. The 1992 Act Does Not Authorize an Uncompensated Taking or a Windfall to Competing Video Providers

Finally, the Commission must reject the many disingenuous efforts to strip cable operators of both assets and compensation for those assets. The "presumptions" and tests proposed by Local Governments retroactively confiscate earnings from a lawfully deregulated market; declare the cable industry fully compensated by those earnings; rule that any installation fee -- or even no installation charge -- compensates for home wiring; and transfer home wiring without compensation. That is a taking pure and simple. LEC proposals to do the same while leaving empty title with cable may have made sense in a telephone

14/ See pp.1, 8 of our Comments of Dec. 1. There appears to be broad consensus that MDU "individual" wiring extends only from the wallplate to the TV receiver. See, e.g., Comments of National Private Cable Ass'n; NCTA; Bell South.

industry which could comfortably charge full installation and expense this wiring, but cable has been unable to charge the full cost of installation in the market. Turning wiring over to homeowners may not be of great benefit to the owner.[15/] It _is_ a boon to competing providers to avoid the expense of wiring. But the home wiring statute provides no right to handicap incumbent cable operators by subsidizing their competitors. (Where Congress sought to do that, it did so expressly, as in new Section 325(b).)

## CONCLUSION

The Commission should adopt the rules recommended in our initial Comments.

Respectfully submitted,

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OCB CABLEVISION, INC.
TELECABLE CORPORATION
TENNESSEE CABLE TELEVISION ASSOCIATION
TEXAS CABLE TELEVISION ASSOCIATION
UNITED VIDEO CABLEVISION, INC.
WESTERN COMMUNICATIONS, INC.
ZYLSTRA COMMUNICATIONS CORP.

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15/ See Comments of NYS Comm'n on Cable.

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